Supreme Court, U.S.
FILED

05 134 JUL 22 2005

OFFICE OF THE CLERK

No. _____

In the

Supreme Court of the United States

STATE OF NORTH CAROLINA,

Petitioner,

v.

MONICA D. BRANCH,

Respondent.

On Petition for Writ of Certiorari to the
North Carolina Court of Appeals

PETITION FOR WRIT OF CERTIORARI

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July 26, 2005

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QUESTION PRESENTED

I. Whether the North Carolina Court of Appeals' Ruling That the Constitution Requires Law Enforcement Officers to Have Reasonable Suspicion of Criminal Drug Activity to Conduct a Dog Sniff of the Exterior of a Car Lawfully Detained During a License Check at a License Checkpoint Directly Conflicts With This Court's Decision in *Illinois v. Caballes*, ___ U.S. ___, 125 S. Ct. 834 (2005)?

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PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

The opinion of the North Carolina Court of Appeals, *State v. Branch*, 162 N.C. App. 707, 591 S.E.2d 923 (2004), is included at App. pp. 1-11.

The opinion of the Supreme Court of North Carolina, *State v. Branch*, 359 N.C. 406, 610 S.E.2d 198 (2005), is included at App. pp. 12-13.

The order denying the State's motion for reconsideration is included at App. p. 14.

JURISDICTION

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISIONS INVOLVED

Amendment IV of the United States Constitution provides in pertinent part: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . ."

Amendment XIV of the United States Constitution provides in pertinent part: "Nor shall any state deprive any person of life, liberty, or property, without due process of law . . ."

STATEMENT OF THE CASE

I. Facts of the Case

On November 3, 2000, Rockingham County Sheriff's Deputy Marcus Marshall was working as a member of the Community-Oriented Policing Unit ("COP") conducting a driver's license checkpoint in conjunction with about twenty other Rockingham County Sheriff's Deputies and two canine (K-9) officers. (Hearing Transcript ("HT") pp. 3-4) The COP unit works to protect and secure citizens of Rockingham County through public relations, interacting with citizens and

businesses, as well as investigating street level narcotics activity. (HT pp. 16, 18) The license checkpoint was set up at the intersection of Bethlehem Church Road and Harrington Highway, with officers stopping all vehicles that entered the intersection as well as those exiting Highway 87 and Highway 14 onto Harrington Highway. (HT pp. 5, 8-11) The checkpoint was approved by Sergeant Jerry Fowler, who coordinates all checkpoints with the captain, the major, and other sergeants. It lasted from ten p.m. until approximately two a.m. (HT pp. 20-21, 37)

During this license check every vehicle entering the intersection was stopped for approximately 40 seconds during which time the driver was asked to produce a driver's license and vehicle registration. (HT pp. 6, 22, 35) The driver could be detained for further questioning, which could extend the duration of the stop, if she did not have a driver's license, presented a license or registration with violations, had outstanding warrants, or if the officers detected an odor of alcohol or an illegal substance. (HT pp. 15-16) The Department used about twenty officers to keep traffic flowing in all directions as much as possible. (HT p. 22)

The K-9 officers were present to aid officers who observed circumstances which warranted a canine sniff of a vehicle. (HT pp. 16, 37-38) The two K-9 officers worked all four of the checking areas and would go where needed if called by another officer. (HT pp. 37-38)

At approximately eleven p.m. Deputy Marshall stopped the defendant, Monica Branch, at the license checkpoint. (R p. 4) As with every other driver that passed through the license checkpoint, Branch was asked if she had a driver's license and vehicle registration. (HT p. 24) Branch presented Deputy Marshall with a duplicate driver's license and a vehicle registration. (HT p. 24) Deputy Marshall decided to question Branch further because of her presentation of a duplicate license. (HT pp. 24-26) His past experience as a law

enforcement officer indicated that often people who presented duplicate driver's licenses were actually driving while their license was revoked. (HT pp. 24-25) Deputy Marshall also asked Branch to pull over, because, due to his prior interactions with her, he believed there were possible outstanding warrants for her and he wanted to ascertain whether they had been served. (HT pp. 26-27)

After he asked Branch to pull over, Deputy Marshall began walking toward his own vehicle to check the validity of defendant's driver's license, which he had with him, as well as to check for the outstanding warrants. (HT pp. 26, 34) As Deputy Marshall returned to his vehicle, he spoke with K-9 Deputy Randy Howell. He informed Deputy Howell that he had requested Branch to pull over and was preparing to check the validity of her driver's license as well as to check for outstanding warrants. (HT pp. 28-29) Deputy Marshall knew Branch had possessed and used illegal substances before. He asked Deputy Howell, a K-9 officer, to step over to the vehicle. (HT pp. 29-32)

Deputy Howell was also familiar with Branch. Upon seeing the duplicate driver's license defendant had presented to Deputy Marshall, Deputy Howell also believed the license's validity should be checked, as he had previously charged Branch with a violation for which her driver's license was revoked, and he suspected that it might still be revoked. (HT pp. 45-46, 50-51) Deputy Howell made his inquiry with Branch while Deputy Marshall was at his vehicle calling Communications to check Branch's driver's license and outstanding warrants. (HT pp. 31-32)

It took Deputy Marshall about five minutes to confirm the validity of Branch's driver's license and to determine whether her outstanding warrants had been served. (HT p. 36) While Deputy Marshall was on the radio checking with Communications, Deputy Howell walked his dog "Toon" around the perimeter of Branch's vehicle, because he had

experience with her in the past in which she had possessed drug paraphernalia. The dog alerted to the presence of the odor of narcotics during the time Deputy Marshall was checking the status of Branch's license and outstanding warrants. (HT pp. 31-33, 40-42, 46)

After "Toon" alerted to the presence of the odor of narcotics, Deputy Howell returned the dog to his vehicle and spoke with Deputy Marshall, who informed him Branch's driver's license was valid and the warrants had previously been served. (HT pp. 26, 28, 32, 44) Deputy Howell advised Deputy Marshall that Toon alerted to the odor of narcotics in Branch's vehicle. (HT p. 33) Deputy Howell informed Branch that the dog alerted and asked Branch and her passenger to get out of the vehicle. (HT p. 44) Deputy Howell searched the vehicle and found marijuana stems and portions of marijuana cigarettes in the ashtray. (HT pp. 44-45)

When Branch got out of the vehicle, she removed a pocketbook. (HT p. 47) After his initial search of the vehicle, Deputy Howell inquired as to the ownership of the pocketbook. (HT p. 54) Branch denied ownership. Deputy Howell then searched the pocketbook. In it he found two plastic containers: a white bottle containing .6 grams of marijuana and a brown prescription bottle, with Branch's name on the label, containing medication. (HT pp. 47-48; Plea Transcript ("PT") p. 8) Branch then acknowledged that the pocketbook was hers. (HT p. 48) Following the discovery of the marijuana in Branch's purse, a female officer searched Branch incident to arrest. Based on prior encounters with Branch, Deputy Howell believed that Branch might have cocaine in her brassiere. (HT pp. 48, 53) When the brassiere was pulled away from Branch's body, a packet containing .3 grams of crack cocaine fell out. (HT p. 48; PT p. 8) Branch never objected to the search of her vehicle, purse, or person. (HT pp. 49-50)

II. Trial Court Proceedings

Monica D. Branch was arrested on November 3, 2000 and charged with misdemeanor possession of less than one-half ounce of marijuana and felony possession of cocaine. (R pp. 2-4) On April 2, 2001, the grand jury of Rockingham County indicted Branch for the felony of possession of cocaine. (R p. 5) On August 8, 2001, Branch filed a Motion to Suppress the drugs seized from her vehicle and her person on November 3, 2000. The motion raised the constitutionality of the stop, seizure, and search under both the North Carolina Constitution and the Fourth and Fourteenth Amendments to the Constitution of the United States. (R pp. 7-9) The hearing concerning the motion to suppress occurred on October 5, 2001 in Rockingham County Superior Court before the Honorable Anthony M. Brannon. (R p. 10) In an Order signed on August 27, 2002, Judge Brannon found no constitutional violation and denied Branch's motion to suppress. (R pp. 10-16) On October 15, 2002, before the Honorable Meltzer A. Morgan, Jr., Branch pled guilty to the felony of possession of cocaine and to the misdemeanor of possession of marijuana and reserved her right to appeal the order denying her suppression motion. (R pp. 17-20; PT pp. 2-11) Judge Morgan sentenced Branch to a suspended sentence of 5-6 months in prison and placed her on supervised probation for 18 months. Branch gave oral notice of appeal in open court immediately after judgment. (PT p. 11)

III. The Decision of the North Carolina Court of Appeals

On February 17, 2004, the North Carolina Court of Appeals issued an opinion reversing Judge Brannon's August 27, 2002 Order denying Branch's motion to suppress. (Pet. App. pp. 1-11) The court found that the license checkpoint was constitutionally permissible, (Pet. App. pp. 7-8), and that the officers had reasonable suspicion to detain Branch past the initial stop to determine the validity of her license. (Pet. App.

pp. 8-9) However, the court also held that the dog sniff of the exterior of Branch's car while she was being legitimately detained to check the validity of her license, conducted without reasonable suspicion of additional criminal activity, was unconstitutional. (Pet. App. pp. 9-10)

In its analysis, the court cited one of its prior opinions, in which it had relied on reasoning in this Court's opinion in *Florida v. Royer,* and it cited the following excerpt from *Royer*:

> An investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop. Similarly, the investigative methods employed should be the least intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time . . . It is the State's burden to demonstrate that the seizure it seeks to justify on the basis of a reasonable suspicion was sufficiently limited in scope and duration to satisfy the conditions of an investigative seizure.
>
> *Florida v. Royer*, 460 U.S. 491, 501 (1983).

(Pet. App. p. 10). Based on this Court's reasoning in *Royer*, the court went on to find that the dog sniff of Branch's car exceeded the purpose and scope of the legal detention for license verification, stating that "[a]llowing the dog sniff of defendant while she was detained on suspicion of carrying an invalid license would not be consistent with this reasoning." *Id.* It found that the trial court erred "in finding that no reasonable suspicion was necessary to conduct the dog sniff and subsequent searches." *Id.*

On April 1, 2004, the Supreme Court of North Carolina issued Orders allowing the State's petition for discretionary review, allowing the State's petition for writ of supersedeas,